

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3525

IN THE MATTER OF:

Served July 10, 1990

AM INTERNATIONAL EXPRESS, INC., for)
a Certificate of Public Convenience)
and Necessity to Conduct Charter)
Operations)

Case No. AP-90-11

By application filed February 27, 1990, AM International Express, Inc. (AM International or applicant), a newly-formed Virginia corporation, seeks a certificate of public convenience and necessity to transport passengers, together with mail, express, and baggage in the same vehicles as passengers, in charter operations between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia.

Pursuant to Order No. 3472, served March 19, 1990, and incorporated herein by reference, a public hearing on the matter was held April 24, 1990. An operating witness and representatives of various business entities testified regarding the application. AM International's application is unopposed.

SUMMARY OF EVIDENCE

Mr. Hun Kim, AM International's secretary-treasurer, is responsible for applicant's day-to-day operations. As the result of previous work in the travel business, Mr. Kim has many customers both in Korea and the United States who are interested in a transportation company offering bilingual (English/Korean) services and an understanding of Korean customs. Mr. Kim desires to operate a transportation company in the Washington area to serve such customers, as well as the general public. AM International is wholly owned by Mr. Kim and Mr. Jacob Lee. Mr. Lee is applicant's president. AM International has no other officers or directors.

Pursuant to Order No. 3491, served April 20, 1990, AM International was granted temporary authority to transport passengers in charter operations between points in the Metropolitan District (except service solely within the Commonwealth of Virginia), restricted to transportation for six specified accounts and further restricted to transportation in vehicles having a manufacturer's designed seating capacity of 26 passengers or less (including the driver). Notice is hereby taken of the fact that the temporary authority became effective on May 14, 1990. The vehicle operated by applicant, which was delivered April 20, 1990, is new and equipped with luxury features including a television, VCR, additional microphone, adjustable seats,

reading lights on all single seats, air-conditioning, and luggage compartment holding between 30 and 40 suitcases. Applicant plans to purchase a second vehicle by the end of the year if business allows. Mr. Kim has purchased an extended warranty for six years or 100,000 miles on the vehicle it currently owns. The dealer will handle all repairs, including those not covered by warranty, and will perform scheduled preventive maintenance on a monthly basis. The vehicle will be garaged commercially to provide safe storage with 24-hour access for authorized use. Drivers would be required to be bilingual (English/Korean) and to meet the requirements established by the United States Department of Transportation. Mr. Kim would drive the vehicle and hire a back-up driver. Additional drivers would be hired as more equipment is acquired. Until additional equipment is acquired, applicant will hire WMATC-certificated carriers for back-up; Mr. Kim is familiar with these carriers through his tour company, Americana Tours.

Applicant plans to advertise its services in the local yellow pages and the Korean media serving the Washington area. In addition, Mr. Kim would solicit business for applicant through weekly contacts with wholesale tour brokers in Korea. Although AM International will specialize in Korean-speaking travelers, Mr. Kim testified that its service would be available to all and that it is applicant's intent to serve anyone needing charter transportation. Business will be conducted from an office in Annandale, VA, equipped with desks, telephone, FAX, and copier. Mr. Kim believes AM International will be a success, despite the existence of other charter bus companies in the Metropolitan District, because it will offer better service.

With its application AM International submitted a proposed tariff listing charter rates of \$38 an hour (October through February) and \$40 an hour (March through September) with a four-hour minimum. Transfer rates were also proposed. Between Washington National Airport, Arlington County, VA, and any point in the Metropolitan District, the transfer rate would be \$115. The rate for transfers between Washington Dulles International Airport, Loudoun County, VA, and any point in the Metropolitan District would be \$160. Transfer rates allot one hour of "free" time for loading and unloading the vehicle. Time used in excess of the free allotment would be charged at a rate of \$38 an hour or fraction thereof. At hearing Mr. Kim testified that tariff Rule No. 5 would be changed to reflect the fact that the tariff would apply to operations pursuant to a certificate of public convenience and necessity rather than temporary authority. Mr. Kim also testified that the minimum for general charter service is six hours: four hours for a charter move of four hours or less, plus two hours "travel time" as described in tariff Rule No. 105. No travel time to or from the garage (deadhead mileage or positioning charge) would be charged for transfers.

With its application, AM International submitted a balance sheet as of February 23, 1990, showing total assets in cash of \$15,500. The sole liability of the company was shown as a shareholder loan of \$12,500 with \$3,000 represented by capital stock. For the 10 months ending December 31, 1990, applicant projects \$88,415 in WMATC operating

income and \$63,490 in expenses, yielding a projected net income of \$24,925. Mr. Kim testified that the balance sheet remained unchanged as of the date of hearing. However, Mr. Kim also testified that since February 23, 1990, AM International had purchased a vehicle costing \$54,000, that the purchase had been accomplished through an automobile loan in the amount of \$30,000, and that also since February 23, 1990, Mr. Lee had invested \$15,500 in applicant. AM International's projection includes 99 airport transfers at \$145 each, 1000 hours of service at peak season rates, 320 hours at off-peak rates, and certain other operating income not at issue in this application. The projection reflects salary for a single full-time driver only. No additional driver or office staff as planned, either full- or part-time, is reflected. Arrangements have been made for payment of insurance over a nine-month period. Mr. Kim testified that AM International has sufficient capital for start-up and that, if necessary, both he and Mr. Lee are each personally able to invest more in the company.

Mr. Kim is familiar with the Compact and the Commission's rules and regulations, including its safety regulations, and intends to assure AM International's compliance with them.

Mr. Chong Kwan Suh, regional manager for Korean Airlines, testified on its behalf in support of the application. Korean Airlines is the national airline of the Republic of Korea (ROK). Mr. Suh's territory consists of the District of Columbia, Virginia, Maryland, West Virginia, and North Carolina. Mr. Suh's main responsibility as regional manager is sales and service to travel agencies within the territory. Essentially, Korean Airlines supplies air tickets and price guidelines to travel agencies throughout the Washington area. The agencies, in turn, sell the tickets to the ultimate users. Travel agencies may sell the tickets alone or as part of a package including ground transportation. The packages result in groups of persons taking the same flight to the same destination where they are transported in in groups when on the ground. Most of Mr. Suh's clients arrange transportation for persons bound for ROK from the United States. However, through his work, Mr. Suh is familiar with the flow of traffic from ROK to the United States as well. According to Mr. Suh, the Korean Immigration Office recorded 800,000 persons traveling from ROK to other countries in 1988. In 1989, due to lifting of certain travel restrictions, the number traveling was estimated to be 1.3 million persons with approximately 60 percent of the increase traveling to Asian countries. The United States is the most frequently visited destination after Asia. Washington, DC, is included on many itineraries because it is the capital and contains many sightseeing attractions. Korean travelers are about equally divided between those traveling individually and those traveling in groups, some of which visit Washington. When travel agencies in ROK organize sightseeing tours of the United States, they send customers to one of three initial destinations: New York City, NY; Los Angeles, CA; and Honolulu, HI. Travel agencies in these gateway cities handle those areas then send customers to Washington, DC, where they are handled by local agencies. It is Mr. Suh's opinion that, if this application were granted, local travel agencies would use AM International's proposed service. Mr. Suh bases this opinion on the nature of the proposed service itself.

Applicant's choice of 25-passenger vehicles would accommodate large groups. Mr. Suh is aware of no other company offering sightseeing in the Metropolitan District with vehicles of the size proposed by applicant and using Korean-speaking drivers. Mr. Suh believes that it is mandatory to provide bilingual (English/Korean) drivers and guides when serving visitors from ROK because, although most pleasure travelers have some knowledge of English, they cannot communicate well in it. Korean Airlines requires charter transportation in limousines, small vans currently operated by the airline for proprietary purposes, and the type vehicle applicant proposes to use.

Ms. Jennifer Ahn owns Image Advertising Consultants, a broker for American businesses seeking to advertise in Asian media both locally and nationwide. Ms. Ahn's office is in Annandale, VA. In the Washington area there are five Korean dailies, two Chinese newspapers, and one newspaper printed in Vietnamese. There are three Korean language radio stations in the Washington area. Ms. Ahn's work involves arranging meetings and hosting Asian media representatives and their crews. As a result, she requires charter transportation, often with a translator, between points in the Metropolitan District twice a month for transfers involving area airports, hotels, government agencies, and private businesses. Ms. Ahn is familiar with the equipment applicant proposes to use. The vehicle is appropriate to her needs since it would accommodate the size group for which she customarily arranges transportation as well as the group's baggage or equipment. The VCR with which the vehicle is equipped would allow these groups to view film clips while traveling between locations. The provision of a bilingual driver is appealing for two reasons. Often Ms. Ahn's Korean clients speak some English but are not completely fluent and, given the many places they need to visit, fluency is required. In addition, the provision of a bilingual driver may represent a savings because the party can avoid hiring a translator. It is Ms. Ahn's opinion that applicant's service is needed.

Mr. Kwan Soo Shin testified in support of the application in an individual capacity. Mr. Shin is a real estate agent and insurance salesman. He has lived in the Washington area for 20 years and is active in church and community service. According to Mr. Shin, the Washington area has a Korean population of approximately 70,000. The Korean community is active, sponsoring 144 churches and 89 organizations. For his part, Mr. Shin is a member of the YMCA and a deacon of the Korean Presbyterian Church, Fairfax, VA. The church has about 800 adult members and arranges local charter transportation to enable its members, especially senior citizens, to travel to Washington, DC, for touring, attending Korean cultural events, and other leisure-time activities. Mr. Shin has seen applicant's vehicle and believes it would be appropriate for the church's transportation needs. Mr. Shin also believes that applicant's provision of a Korean-speaking driver familiar with Korean customs would be an advantage to the church's senior citizens because older Koreans born in that country often do not understand English well. Mr. Shin is aware of no other company in the Metropolitan District offering service

similar to that proposed by applicant. In Mr. Shin's opinion, the service would be helpful to the Korean community and would meet a currently unfilled need for a tour company specializing in serving Koreans.

Mr. Kim, applicant's operating witness, testified on behalf of Americana Tours in support of the application. */ Americana Tours is a sole proprietorship; Mr. Kim is the proprietor. Americana Tours has operated for approximately one year, arranging sightseeing tours of the Washington area for Koreans and persons of Korean descent living in the United States. Most clients come to Americana Tours in groups through wholesale tour brokers located in either Seoul, Korea, or Los Angeles, CA. Client groups may come to Washington directly from New York City, NY; Los Angeles, CA; Chicago, IL; Hawaii; Korea; or Japan. Americana Tours arranges airport transfers and sightseeing tours for clients while in the Washington area. Mr. Kim also travels to Korea to make sales calls personally. Last year Americana Tours arranged transportation for five groups a month, on average. Approximately two of these groups require a 25-passenger vehicle; approximately three of these groups require a 15-passenger van. Americana Tours' business is growing rapidly. Mr. Kim projects that next year Americana Tours will require service in a 25-passenger vehicle at least twice--and perhaps four times--a week. Americana Tours believes applicant's service is needed because vehicles are so hard to secure during peak season. Bilingual drivers are also at a premium. If this application were granted, Americana Tours would use AM International's service. As applicant's representative, Mr. Kim testified that, should Americana Tours require so much service as to effectively occupy AM International's single vehicle full-time, then applicant would obtain an additional vehicle in order to serve other clients.

Mr. Sung Chul Shin, tour manager for Sharp Travel, testified on its behalf in support of the application. Sharp Travel is owned by Mr. Lee who also owns 50 percent of applicant's stock. Sharp Travel sells airline tickets and, through a travel agency in Korea, package tours; it also offers travel assistance to non-English speaking Korean visitors to the Washington area. Sharp Travel arranges charter transportation in the Washington area for five groups a month on average. The groups range in size from six to forty. During the first four months of 1990, Sharp Travel required a 26-passenger vehicle twice. In Mr. Shin's opinion Sharp Travel will require use of a vehicle of this size in the future. Sharp Travel's clients require

*/ Mr. Paul Choi, an employee of Americana Tours, testified briefly regarding Americana Tours' need for applicant's service. He was withdrawn as a witness in order that Mr. Kim might testify. Applicant's attorney proffered Mr. Kim as one who was more knowledgeable regarding Americana Tours' requirements. Mr. Choi's testimony is subsumed in Mr. Kim's.

Korean-speaking drivers and tour guides because most of its clients do not speak English. If this application were granted, Sharp Travel would use AM International's service.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, the Commission looks to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact as follows:

. . . the Commission shall issue a certificate . . . if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity

Based on a review of the record in this case, the Commission finds applicant to be capable of providing the proposed service and willing to conform to the Compact and applicable rules and regulations imposed by the Commission acting pursuant to the Compact.

Evidence introduced at hearing shows that applicant has made provision for preventive maintenance, repairs, and garaging of its new, fully-equipped touring vehicle. Sufficient automobile liability insurance is already in place as a result of AM International's grant of temporary authority. See Order No. 3491, served April 20, 1990. Drivers would be adequately trained. Applicant's business plan calls for specialization in sightseeing tours spoken in Korean. In furtherance of this purpose, applicant's drivers would be bilingual and applicant's secretary-treasurer is actively soliciting business in Korea, through wholesale tour brokers, and in the United States, through the Korean-language media. Applicant's proposal provides for support services adequate to this business plan. Service would be available to all who need charter transportation, and broader advertising and publication is also planned. AM International is thinly-capitalized. However, in light of the limited nature of operations initially planned, applicant's financial condition is sufficiently sound to support a grant of operating authority. A review of the record indicates that AM International's principals may not have complied with the Compact in the past. To the extent, if any, that is the case, the current familiarity of applicant's operating witness with the Compact and the Commission's rules and regulations, together with the filing of its applications before the Commission and the totality of the circumstances of this case, indicate applicant's ability and willingness to comply therewith in the future.

In determining whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service, the Commission has relied on the test enunciated in Pan-American Bus Lines Operation (1 M.C.C. 190, 203 [1936]). The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Five witnesses testified in support of the application. These witnesses included travel industry professionals who are in a position to recognize a service need and other individuals whose organizations intend to use applicant's service as proposed.

These witnesses described the need of Korean groups for the type of specialized service that AM International proposes, specifically charter transportation in a modern, mid-sized, luxury-equipped vehicle driven by a person bilingual in Korean and English who is familiar with Korean and American cultures. Testimony was also adduced that AM International is willing and ready to provide charter service beyond the Korean community, i.e., to any group in the Metropolitan area needing it. The evidence establishes that the proposed service in vehicles capable of transporting 26 passengers or less (including the driver) is responsive to a public need. Although transportation of passengers' baggage is an ordinary adjunct of such charter service as is proposed herein by applicant, the record is bereft of any evidence of need for the transportation of mail or express. Accordingly, to the extent authority is sought for the transportation of mail and express, the application must be denied.

The witnesses testified that AM International was the first organization of which they were aware that would offer such specialized service. It appears that the identified need cannot be as well met by any existing carrier.

With respect to the third test, it is noted that no carriers appeared in opposition to this application. This suggests that there is no demonstrable harm to any existing carrier from the authorization of applicant's proposed service. In any event, the record offers no proof of such harm.

In granting AM International a certificate of public convenience and necessity, the Commission is cognizant of the fact that both its principals own travel agencies requiring the transportation applicant proposes. As discussed in Order No. 3491, such ownership, in the absence of evidence that AM International would discriminate against others in need of service, does not bar those agencies from consideration when determining whether the public convenience and

necessity require applicant's service. There is no such evidence in this record. No preferential rates are proposed. Although it is conceivable that Sharp Travel and Americana Tours could exclusively occupy the single vehicle applicant currently owns, those two travel agencies do not appear to have transportation requirements so great as to lead to that result. Moreover, arrangements would be made to lease additional equipment if needed, and AM International plans to expand to two vehicles by the end of the year. Nonetheless, AM International is cautioned against preferential treatment of the accounts of Sharp Travel and Americana Tours to the detriment of the public. AM International's service obligation requires non-discriminatory treatment of all.

THEREFORE, IT IS ORDERED:

1. That AM International Express, Inc., is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers, together with their baggage in the same vehicles as passengers, in charter operations between points in the Metropolitan District except transportation solely within the Commonwealth of Virginia, restricted to transportation in vehicles having a manufacturer's designed seating capacity of 26 passengers or less (including the driver).

2. That in all other respects the application of AM International Express, Inc., is hereby denied.

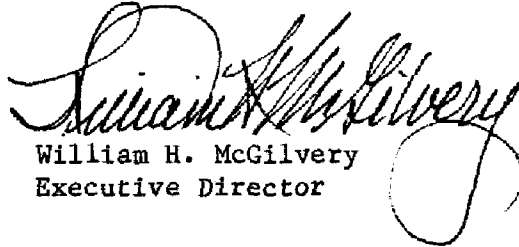
3. That AM International Express, Inc., is hereby directed to file with the Commission within 30 days of the service date of this order the following: (a) three copies of its WMATC Tariff No. 1 with all reference to temporary authority deleted as discussed in the body of this order; (b) an equipment list specifying make, model, year, serial number, vehicle number, seating capacity (including the driver), and license plate number (with jurisdiction) for each vehicle to be used in revenue operations; (c) evidence of ownership or a lease in conformance with Commission Regulation No. 69, as appropriate, for each vehicle to be used in revenue operations; and (d) an affidavit of identification of vehicles pursuant to Commission Regulation No. 67, for which purpose WMATC No. 169 is hereby assigned.

4. That unless AM International Express, Inc., complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority contained herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

5. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to AM International Express, Inc., in the form and as worded in the Appendix to this order.

6. That, upon issuance of a certificate of public convenience and necessity to AM International Express, Inc., the temporary authority granted by Order No. 3491, served April 20, 1990, shall stand terminated.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director

NO. 169

AM INTERNATIONAL EXPRESS, INC.

By Order No. 3525 of the Washington Metropolitan Area Transit Commission issued July 10, 1990;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3525;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES

CHARTER OPERATIONS transporting passengers, together with their baggage in the same vehicles as passengers, between points in the Metropolitan District,

RESTRICTED to transportation in vehicles having a manufacturer's designed seating capacity of 26 passengers or less (including the driver) and further restricted against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.